

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2637 OF 2013

SAYAJI KONDIBA SHELKE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...

Advocate for Petitioner : Mr. N. L. Jadhav.
AGP for Respondent Nos.1 to 4: Mr. S. N. Morampalle.
Advocate for Respondent No.5 : Mr. B. R. Kedar.

CORAM : S.V. GANGAPURWALA & A.M. BADAR, JJ.
DATE : 13TH JANUARY, 2016.

PER COURT:

- 1] Leave to amend. Amendment to be carried out forthwith.
- 2] As per the petitioner, an application for regularization of his encroachment on land Survey No.1 situated at Bhanang Jalgaon, Tq. Ambad, Dist. Jalna to the extent of 6 Acres, 17 Gunthas, was given to the Collector, and the same is not being decided.
- 3] According to Mr. Jadhav, learned counsel, after affidavit in reply is filed by the State, the petitioner got knowledge that the Collector has passed order on 3.5.2011 rejecting the application of the petitioner and asking the respondent No.5 to approach the police station. According to learned counsel for the petitioner, the said order is passed behind the back of the petitioner. In fact, the civil suit filed by respondent No.5 claiming injunction is also dismissed, in which the present petitioner was a party.
- 4] Mr. Kedar, learned counsel for respondent No.5 submits that the said land in question is alluvial land and respondent No.5 is allotted the alluvial land in the year 2007 and he is in possession of the same. He submits that the aspect of ownership has been rightly considered by the Collector.

5] Learned AGP submits that as per the report received the order has been passed by the SDO.

6] We have considered the submissions. It does not appear that while arriving at conclusion vide order dated 3.5.2011, parties were given any notice or were heard. Various aspects which are averred by the respective parties in the present petition were certainly not before the SDO. The letter dated 3.5.2011, issued by the SDO to the Collector states that the respective applications of the petitioner and respondent No.5 are decided. However, as the parties were never heard or noticed, we set aside the said order (Exhibit R-2) and direct the SDO, to consider the applications filed by the petitioner and respondent No.5 afresh, after hearing them. Parties shall appear before the SDO, Patna on 4th February, 2016. The SDO shall thereafter decide the applications of the respective parties, expeditiously and preferably within six months from the date of appearance of the parties before it. Writ petition is disposed of.

[A.M. BADAR]
JUDGE

[S. V. GANGAPURWALA]
JUDGE

grt/-